GOVERNMENT OF MYSORE.

FOOD, CIVIL SUPPLIES AND LABOUR DEPARTMENT (LABOUR).

Labour Dispute —Industrial Dispute between the Workmen and the Management of Karnatak Medical College Hospital, Hubli.

Award of the Labour Court, Hubli-Published.

Read the following papers :—

(i) Letter No. 1707-/67-68, dated 1st December 1967 from Shri Syed Azizuddin Ahmed, Presiding Officer, Labour Court, Hubli.

IN THE LABOUR COURT AT HUBLI.

Dated 1st December 1967.

Reference (I D) (LCH) No. 29 of 1967.

Present :

Shri Syed Azizuddin Ahmed, M.A., B. L. ... *Presiding Officer.*

Between

The Workmen of Karnatak Medical College, Dharwar Road. Hubli, represented by the General Secretary, Karnatak Medical College Employees' Union, Hubli.

... *I Party*

and

The Management of Karnatak Medical College, Dharwar Road, Hubli.

... *II Party.*

This is a reference under section 10 (1) (c) of the Industrial Disputes Act, 1947 made by the Government of Mysore in their Order No. LMA 507 LLD 66 dated 6th April 1967. The points of dispute referred for adjudication are as under :—

1. Is the Dean, Karnatak Medical College Hospital, Hubli justified in punishing Sri Beesi Subbaiah with loss o

one increment ? If not to what relief is this workman entitled to ;

2. Is the dismissal of Smt. Nagavva R. Bhangi by the Dean of Karnatak Medical College Hospital, Hubli, justified ; If not is she entitled to reinstatement with back wages ?

2. The cause of the aggrieved workmen has been sponsored and espoused by The Karnatak Medical College Employees' Union, Hubli represented by its Secretary, Sri P. G. Wadikar appeared for the I Party while Sri P. R. Javali, Advocate appeared for the second. in response to the notices issued by this Court, the parties have filed their pleadings dated 19th May 1967 and 2nd June 1967 respectively.

3. The points of dispute specified in the order of reference were adopted as issues in the case. The second party examined one witness while the first party four. The second party got marked 14 documents as exhibits while no document was filed by the first party. When the case was taken up for hearing on 28th November 1967, Sri P. G. Wadikar stated that the first party withdrew the dispute relating to Sri Beesi Subbaiah, one of the delinquent workmen mentioned in the order of reference.

4. From the pleadings it transpires that on 29th March 1965, the Matron of the K. M. C. Hospital, Hubli sighted Smt. Nagavva, the delinquent workman carrying a bag in one hand and vessel in the other. She grew suspicious and took her to her Office. The bag was found to contain jawar roties and slices of bakery bread and there was dal curry in the tiffin-box. On being questioned, Nagavva replied that she took the food-stuff from the pantry of the Gynaec A and B ward with the permission of Ayah Khairunnisa. The matter was immediately brought to the notice of the Resident Medical Officer, who was available then. One of the nursing Superintendents Smt. G. Nathanial recorded the statement of Nagavva and the Matron gave a report to the Dean of the Hospital. Dr. Choukar, Vice Dean held a preliminary enquiry and gave a report. The Dean of the hospital thereupon, appointed Sri S. K. Vishveshvar. a Surgeon of the hospital as the enquiry Officer to hold an enquiry in the matter. The enquiry Officer framed charges and served them on the delinquent asking her to file her reply by 6th April 1965. There was no response to this. She did not attend this domestic enquiry despite notice. He then concluded the enquiry *ex parte* and submitted his

findings to the Dean of the hospital. The latter, on perusing the enquiry papers, and after going through the findings of the enqairy officer, passed the order dated 16th June 1965 dismissing her from service. It is this order of dismissal that is being assailed by the first party. The corner stone of the defence is that Nagavva was carrying the javar roties and dal curry given to her by the indoor patients and it was not the property of the management. Hence, she has not committed any offence in carrying the food-stuff. The enquiry officer did not actually hold any enquiry. The so-called enquiry is a make belief affair.

Findings.

5. This is a simple reference. The second party, as I shall show presently, has made a mountain of a mole hill. Sri S. K. Vishveshvar, M. W. 1 is the enquiry officer, who has deposed to the domestic enquiry and filed the connected papers which were marked as Exhs. M-1 to M-14. In rebuttal, after deposing to the preliminaries, Nagavva, W. W. 1 deposed that on receiving the notice of enquiry she went to the place of enquiry along with one Narayanappa. They waited there from 4-0 P. M. to 7-0 P. M. but no enquiry was held. When the Resident Medical Officer recorded her statement, the Matron asked her whether her husband was the union Secretary, but she did not reply. She denied that she had stolen the cooked food-stuff from the pantry. She maintained that she was carrying the food-stuff given to her by the patients. Narayana, W.W.2 deposed that he had accompanied Nagavva to the place of enquiry on 8th April 1965 but no enquiry was held. B. Bullappa, W.W.3 has been examined to show that the food of the hospital left by the patients istaken away by the hospital menials. This is a practice continuing from the establishment of the hospital and it is still in vogue. Ramappa, W.W.4 is the husband of the delinquent workman. The sum and substance of his deposition is that he is the Secretary of the K. M. C. Employees' Union. The management had asked him to give up the Secretaryship. After the formation of the Union, the hospital authorities started suspending and dismissing the menials. The Union had raised industrial disputes. Nagavva has been dismissed from service because she is his wife.

6. The representative of the first party could not lay his finger on any infirmity in the domestic enquiry, He went to the length of saying that the second party without holding any enquiry had concocted all the papers of domestic enquiry. This is an

argument of despair. I am not inclined to attach any importance to it. I refuse to believe that the second party would have stoped so low as to concoct and fabricate documents against a poor Harijan sweeper-woman. It is nothing short of an insinuation to say that the service of the delinquent workman has been terminated for the reason that her husband was the union secretary. The second party would be least worried about these matters. But, I find much substance in the contention of Sri P. G. Wadikar, the learned representative of the first party that the punishment that has been meted out to the delinquent workman is excessively harsh and grossly severe. The learned representative of the second party argued that the enquiry has been fairly and properly held and the punishment that has been awarded to the delinquent by the management is commensurate to the seriousness of the guilt. I cannot find myself in agreement with the later part of this argument. I am conscious of the fact that this Court is not to function as a Court of appeal over orders passed by the management. But when the Court finds that the punishment that has been meted out to the delinquent is grotesque and out of proportion to the gravity of the offence, it can interfere with the order of punishment.

7. I shall first consider Exh. M-1 which is the book of genesis of this dispute. It is a report by the hospital Matron addressed to the Dean of the hospital. In the body of the report she has stated that when Nagavva was found carrying the food-stuffs at this time another female sweeper named Venkavva Madar was found carrying a vessel with about 2-3 ounces of milk. She asked her from where she took the milk to which she replied that some patients had given it to her son who was with her. She apologised whereupon she was warned and let off. From this it is crystal clear that at one and the same time one sweeper woman was found carrying some ordinary cooked food-stuff and another carrying milk. The woman who was carrying milk, the nector and ambrosia of the patients was allowed to go scot-free while a woman who was carrying javar roties and dal curry was hauled up saying that she had committed the theft of the same. I fail to understand this discrimination, and double standard of judgment. On the reverse of Exh. M-2 the statement of the delinquent workman under date 31st March 1965 it has been noted that the articles of diet were found to weigh-bread and jawar roties 900 gms., curry with the container

1 kg. In the memo of the Dean of the hospital Exh: M-4 appointing Sri Vishvesvar as the enquiry officer, it has been stated that there were nine jawar roties and six slices of bakery bread in the bag and dal curry in the tiffin-carrier. In her statement Exh. M-2 the delinquent workman has stated that she had taken the left over food in the pantry with the permission of the Ayah of the concerned ward. On 31st March 1965 the management interrogated Khairunnisa about this incident. Khairunnisa has denied her presence in the pantry when the delinquent workman had taken the food-stuffs from there. However, she has clearly admitted that herself and Nagavva were going together when the Matron stopped Nagavva. Nagavva was then carrying a bag and a vessal but she did not know what they contained. It is to be seen that this incident took place on 29th March 1965 at about 7-0 P.M. According to the statement of Khairunnisa she was accompanying Nagavva then. Nagavva's case was that she had picked up these articles with the permission of the Ayah. It was the bounden duty of the Matron to have interrogated Khairunnisa then and there. Had she been examined then and there, perhaps the truth would have trickled from her lips. In such situations time is the essence of the matter. This time lag gave her the occasion to extricate herself from this awkward situation. It would be too much to expect of Smt. Khairunnisa to come to the help of Nagavva at the time of her adversity. I feel that Sri Vishvesvar, the Surgeon who was appointed as the enquiry officer took the incission too deep in recommending the dismissal of Nagavva. If any physician with the milk of kindness in his heart had been appointed as an enquiry officer. The finding and the recommendation might have been different. In short, for the alleged theft of nine jawar roties, six bakery bread slices and dal curry, the enquiry officer recommended the dismissal of the delinquent and the learned Dean of the hospital adopted the findings and passed the dismissal order. This order of dismissal is not in keeping with the trends of the time. Even the Criminal Procedure Code has been suitably amended to bring it in consonance with the modren trends. In respect of certain offences even the Magistrates have been empowered to let off the first offenders on admonition or on probation of good conduct. When the accused make clean breast of the matters, they are treated leniently in order to encourage truthful speaking in law courts. Here is a case where a workman is dismissed from service for a very petty offence and for making a clean breast of the matter. Let it not be understood that I approve of the conduct of the delinquent in carrying away the

cooked food of the hospital whether from the pantry or from any other place even though given by the patients. I record my condemnation of her conduct, but I feel that the punishment meted out to her is certainly out of proportion to the gravity of the offence. This amounts to victimisation in the eye of law. I fortified in this *view* by a decision of the Calcutta High Court reported in 1960 (2) LLJ page 175/176. It runs thus:

> " Victimisation means one of two things.—The second case is where an employee has commited an offence but he is given a punishment quite out of proportion to the gravity of the offence.

In this *view* of the matter, I hold that the dismissal of Smt. Nagavva. R. Bhangi by the Dean of the K. M. C. Hospital, Hubli was not justified.

8. Before I conclude, I shall refer to yet another argument advanced by the learned representative of the second party that the dispute is not an industrial dispute. It needs no lengthy discussion or learned arguments to establish that the present dispute is an industrial dispute. From the mighty steel and textile industries to a hair-cutting saloon have been held as industries. There are decisions, which go to show that municipalities hospitals and even chatrams where poor-feedings is done are industries, and that profit motive is not a criteria for an industry [*Vide* 1957 (1). LLJ page 55]. Thus, I hold that the present dispute is an industrial dispute.

AWARD.

1. The Dean of the Karnatak Medical College Hospital Hubli was justified in punishing Sri Beesi Subbaiah with loss of one increment.

2. The dismissal of Smt. Nagavva. R. Bhangi by the Dean of the Karnatak Medical College Hospital, Hubli was not justified. She is entitled to reinstatement with continuity of service but she shall not get the back wages. She shall be reinstated in service by the second party within fifteen days of the publication of the award in the *Mysore Gazette*, The parties shall bear their own costs.

SYED AZIZUDDIN AHMED
Presiding Officer.
Labour Court, Hubli.
1-12-67

Place: Hubli
Date: 1-12-1967

ANNEXURE

Reference (ID) (LCH) No. 29/67.

Witnesses examined for I Party

W.W 1 Nagavva W/o Ramappa
W.W. 2 Narayan Nagappa
W.W. 3 B. Bullappa
W.W. 4 Ramappa Krishnappa

Witnesses Examined for II Party

M.W 1 S. K. Visvesvar

Documents marked for I Party

Exhibits:

Nil

Documents marked for II Party

M-1 Complaint dated 29th March 1965 by Matron
M-2 Statement dated 29th March 1965 by Nagavva
M-3 Statement dated 29th March 1965 by Khairunnisa
M-4 Appointment order dated 1st April 1965 of Dr. Visveswar as enquiry officer.
M-5 Preliminary enquiry report dated 1st April 1965 by Dr. Visvesvar.
M-6 Charge sheet dated 3rd April 1965
M-7 Signature by Ramappa in Muddam Book on 3rd April 1965
M-8 Letter dated 7th April 1965 to Nagavva
M-9 Enquiry report dated 15th April 1965 of the E. O.
M-10 Show cause notice dated 21st April 1965 to Nagavva.
M-11 Explanation dated 22nd April 1965 of Nagavva.
M-12 Application dated 24th April 1965 of Nagavva.
M-13 Order dated 16th June 1965 treminating the service of Nagavva.
M-14 Signature of Nagavva in the Muddam Book dated 7th April 1965.

SYED AZIZUDDIN AHMED,
Presiding Officer,
Labour Court, Hubli

Place: Hubli

Date: 1-12-1967.

ORDER.

Bangalore, dated 8th December 1967.

S. O 2414.—WHEREAS by State Government Order No. LMA 507 LLD 66, dated 6th April 1967, the Industrial Dispute between the Workmen and the Management of Karnatak Medical College Hospital, Hubli was referred to the Labour Court, Hubli for adjudication.

AND WHEREAS the Labour Court has submitted to the State Government, its award in respect of the said Industrial Dispute;

NOW, THEREFORE, in exercise of the powers conferred by Section 17 of the Industrial Disputes Act, 1947 (Central Act XIV of 1947), the Government of Mysore are pleased to direct the publication of the said award as above, in the *Mysore Gazette*.

[No. FCL 507 LLD 66.]

By Order and in the name of the Governor of Mysore,

1626 G. G. PUROHIT, *Under Secy.*